

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 03-1014

JC

EVA PALMA ATENCIO,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant Eva Atencio's Motion for New Trial and Memorandum in Support, filed July 7, 2004 (*Doc. 106*). The Court, having considered the motion, the relevant authority, and being otherwise fully advised, finds the motion not well-taken and it is, therefore, denied.

Federal Rule of Criminal Procedure 33 authorizes a district court to grant a new trial if required in the interests of justice. *United States v. Quintanilla*, 193 F.3d 1139 (10th Cir. 1999). A Motion for a new trial is generally regarded with disfavor and should only be granted with great caution. *Id.*

Defendant Eva Atencio contends that justice requires that she be granted a new trial, for she was charged by indictment in the conjunctive but the jury was instructed in the disjunctive and received a verdict form drafted in the disjunctive. Because the Court addressed this argument in open Court both before and after instructing the jury, and it is well-settled that where, as here, a statute may be violated by multiple means, the government need only prove Defendant's guilt in the

disjunctive¹, the Court denies Defendant's motion on these grounds. Eva Atencio further contends that a new trial is necessary because the government presented insufficient evidence to support the jury determination that Eva Atencio held a supervisory or managerial position within the criminal organization. The Court disagrees and finds instead that there was ample evidence presented at trial supporting the conclusion that Eva Atencio was in charge of many aspects of the drug operation, including but not limited to hiring, paying and instructing individuals who transported drugs.

WHEREFORE,

IT IS ORDERED that Defendant Eva Atencio's Motion for New Trial and Memorandum in Support, filed July 7, 2004 (*Doc. 106*) is DENIED.

Dated August 10, 2004.



SENIOR UNITED STATES DISTRICT JUDGE

¹See, e.g., *United States v. Powell*, 226 F.3d 1181, 1192 (10th Cir. 2000).